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OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules.	Rulemaking 11-12-001 (Filed December 1, 2011)

CELLCO PARTNERSHIP DBA VERIZON WIRELESS (U 3001 C) OPENING COMMENTS ON ALTERNATE PROPOSED DECISION OF COMMISSIONER SANDOVAL ADOPTING GENERAL ORDER 133-D

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Cellco Partnership dba Verizon Wireless (U-3001-C) files these Opening Comments on Commissioner Sandoval's Alternate Proposed Decision Adopting General Order 133-D (the "APD" or "Alternate Proposed Decision"). For the reasons stated below, the Commission should not adopt the Alternate Proposed Decision and instead adopt President Picker's Proposed Decision.

PREFACE

President Picker's proposed decision—which rejected the ill-conceived notion of yet another investigation into wireless service quality—is the right path for wireless consumers.

This Commission has a responsibility to protect California citizens in natural-monopoly industries. Wireless voice is not one of those industries. Wireless consumers have enjoyed incredible advances in quality, technology and value wholly in the absence of regulation. Imposing the monopoly utility-derived concept of service standards is not only unnecessary, but would undermine the competitive process that has brought about these consumer benefits and would stifle innovation.

More than 40 states do not regulate wireless service at all, and no state has ever imposed utility service standards on this competitive industry. There is no longer any serious debate that a competitive, unregulated telecommunications market structure maximizes consumer welfare and thus is in the best interest of consumers.[1] Since the Ma Bell era, state and federal regulators have created a choice-based regime in which consumers decide which providers and services best meet their needs. That policy evolution recognizes that any level of regulation should be tailored to competitive conditions. Simply put, *less regulation* is warranted where competitive forces are sufficient to provide incentives for firms to produce the products and services customers want at reasonable prices and service levels. When Congress and President Clinton pre-empted states from rate and market-entry regulation of wireless services in 1993, there were two providers of cellular telephone service in each geographic area. Through light-touch regulation and Federal spectrum auctions, the competitive market for wireless service has advanced rapidly, and flourishes today.

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[1] *See*, *e.g.*, Kahn, Alfred E., *The Economics of Regulation: Principles and Institutions*, *Vol. I*, MIT Press, 1988, at 17 ("[t]he main body of microeconomic theory can be interpreted as describing how, under proper conditions—for example, of economic rationality, competition, and laissez-faire—an unregulated market economy will produce optimum economic results," and "the single most widely accepted rule for the governance of the regulated industries is regulate them in such a way as to produce the same results as would be produced by effective competition, if it were feasible.").

As a result of light-touch regulation, the wireless market has—in a short time—undergone one radical transformation after another. In a generation, wireless service has progressed from sporadic analog 1X voice service to high-quality, reliable 4th generation LTE wireless service (and soon, 5G)—a level of service quality that could never have been achieved through a legacy regulatory paradigm where service standards are mandated because the monopoly "utility company" lacks, by definition, a competitive incentive to continually address and improve the quality of its service. The need to meet consumer demand or lose customers to the competition continues the inexorable improvements in service quality and drives technology and investment today.[2]

The dynamic of carriers trying to win and retain customers in the free market motivates innovation and differentiation. Verizon, for example, was the first to deploy and lead the 4G LTE revolution, forcing other carriers to invest in order to catch up to Verizon. In addition to vastly improved data speeds, this new technology propagated high-definition voice, a drastically more clear level of voice quality.[3] A similar game-changing advance is occurring now with Verizon leading the industry in developing 5G.[4] While other providers spoke of 5G as years away, Verizon has moved forward, and anticipates some level of commercial deployment in 2017.[5] Other carriers have already begun to try to catch up to Verizon.[6]

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[2] Advances in service also ushered in advances in the handset, from the Motorola DynaTAC large brick style phone with only 30-minutes of battery life and costing $4,000 in the 1980s to the subsidized smartphones we enjoy today. *See, e.g.*, The Evolution Of The Cell Phone—How Far It's Come!, *Readwrite*, July 4, 2014, http://readwrite.com/2014/07/04/cell-phone-evolution-popsugar/.

[3] How HD Voice Works to Make Your Calls Sound Drastically Better, April 2, 2013, http://www.wired.com/2013/04/how-hd-voice-works-to-make-your-calls-clearer/ ("It's no gimmick. Once carriers actually support HD Voice, your call quality will drastically improve. Background noise should fade away while you're chatting with your parents in a coffee shop. Your friend's voices will sound more rich and life-like over the phone. And hopefully you'll never again say, 'Can you hear me now?'").

[4] Verizon Is First U.S. Carrier To Complete 5G Radio Specifications: Pre-Commercial Trials Continue Full Steam Ahead, *Yahoo! Finance*, July 11, 2016, http://finance.yahoo.com/news/verizon-first-u-carrier-complete-130000901.html ("Verizon is driving the 5G ecosystem with members of their 5G Technology Forum including: Cisco, Ericsson, Intel, LG, Nokia, Samsung, and Qualcomm Technologies, Inc., a subsidiary of Qualcomm Incorporated.").

[5] *See, e.g.*, Verizon to Commercially Deploy 5G Wireless Networks in 2017, Yahoo! Finance, April 22, 2106 http://finance.yahoo.com/news/verizon-commercially-deploy-5g-wireless-191907995.html ("Although several industry researchers have predicted that a full-fledged 5G network deployment will not start until 2020, Verizon expects some level of commercial deployment in 2017.").

[6] *See, e.g.*, 5G vs. 4G: 4 Things Investors Should Know Before 2020, *Investopedia*, June 29, 2016, http://www.investopedia.com/articles/investing-strategy/062916/5g-vs-4g-4-things-investors-should-

Imposing service quality standards on wireless service in this competitive market would distort innovation and the deployment of next generation services. First, it would impinge on industry's ability to experiment because new technologies may not initially meet the legacy standards, causing providers to launch new services in other states or forcing them to adopt inefficient price-increasing configurations to meet the standards. This would stifle disruptive innovators. Verizon, AT&T, T-Mobile, and Sprint will be harmed by the application of standards (limiting how much they can differentiate themselves); but such standards pose even greater harm to new entrants and disruptive technologies that may not be able to meet the prescribed standards at first, and thus will never get the chance to enter the market and innovate to the benefit of customers. Consider the following examples of disruptive innovations that provide significant consumer choice and benefits, but do not meet the "standards" of the existing providers and technologies:

- *Renewable energy*. Traditional sources of power generation — coal-fired, oil, electric, natural gas, hydro, and nuclear — are primarily base-load, always-on forms of power. Newer technologies, such as wind and solar, by contrast are intermittent and variable. If these new sources of power had to meet the base-load standards, they would be precluded.
- *The sharing economy*. Consumers are benefiting from the "sharing economy," with new sources of app-based competition for hotels and transport services, such as Airbnb, Uber, and Lyft. If these new choices for consumers had to meet all of the service characteristics of the incumbent providers, there would be no innovation and consumer choices and benefits would be lost.
- *Internet access*. A wide range of companies and governments are exploring new ways of meeting the needs for broadband Internet access. Google is experimenting with high-altitude balloons,[7] Facebook is working on drones,[8] Elon Musk's SpaceX is developing improved satellite systems,[9] and many

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know-2020-vzt.asp ("Verizon competitor AT&T Inc. expressed skepticism at the time due to the immaturity of the technology and the lack of industry standards. However, by February 2016, AT&T had jumped on the accelerating 5G bandwagon by announcing its own updated development roadmap, including non-commercial field trials by year-end 2016."); AT&T joins Verizon in 5G testing this year, promising speeds 10-100x faster than LTE, February 2016, http://9to5mac.com/2016/02/12/5g-att-verizon-testing/ ("Verizon began lab-testing its 5G network last year, aiming to carry out the first real-world tests this year, and AT&T has now announced that it will be doing the same.").

[7] http://www.google.com/loon/.

[8] https://www.facebook.com/zuck/posts/10101322049893211.

[9] http://www.nbcnews.com/science/space/spacexs-elon-musk-touts-seattle-office-satellite-venture-n285281.

> companies are developing small-cell technologies to densify the existing wireless 4G LTE network and pave the way for 5G. If all of these means of providing internet access had to meet minimum standards as a condition of entry, they might not get off the ground.

These concerns are not just academic. For example, when Google started its deployment of Google Fiber in Kansas City, it considered offering voice services at a low cost, but decided against it because "in the United States, there are all of these special rules that apply."[10] Google Fiber is now offering voice service, but only after a delay of several years caused by existing regulation. Service standards are exactly the type of regulation that can cause new providers to limit or delay their offerings, to the detriment of consumers.

Second, requiring all carriers to meet the same level of service curtails differentiation, which is a key way actors in competitive markets provide consumers with more and varying options to better meet their needs. Not all consumers want to pay for or need the same level of service or feature sets. Take "dropped calls," for example. Imposing a particular minimum standard for dropped calls could eliminate providers seeking to serve a niche local market at low prices with a limited network. If all carriers had to meet a CPUC-defined level of service standards, then the ability for carriers to stand out from others is eliminated, and consumers will no longer benefit from the fierce competitive desire of providers to outdo or outwit their rivals.

Third, forcing national wireless carriers to adapt their technology and business practices to accommodate the service quality rules of a single state would result in enormous costs and inefficiencies with the unintended consequence of harming consumers.

Those who propose wireless service quality standards fail to appreciate—or willfully ignore—that the entire regulatory construct *depends* on the existence of a traditional monopoly utility industry structure, which wireless is not. Traditional telephone companies began over a hundred years ago as natural monopolies; service quality regulation filled the gap left by the absence of customer choice. The wireless industry is indisputably different. There is no monopoly, and rapid innovation is part of its DNA—without rapid evolution, carriers do not survive. It is dynamic, transformative, and responsive to consumer demand. And the evidence

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[10] Regulations Prevented Google From Adding VoIP Services To Google Fiber, *Android Authority*, December 4, 2012, http://www.androidauthority.com/regulations-prevented-google-from-adding-voip-services-to-google-fiber-136723/.

in this docket is that consumers are overwhelmingly satisfied with wireless service.[11] In short, while monopoly regulation may *correct* distortions caused by the absence of competitive markets, it *causes distortions* in competitive markets, disrupts innovation, and thereby harms consumers.

Yet, since 2002, advocates for more regulation have urged this Commission on multiple occasions to end its current policy of relying on market forces to drive wireless service quality and to impose monopoly-era inspired standards on wireless providers. On each occasion the Commission considered the matter, it appropriately refused to do so. The sound legal and policy reasons for that considered decision remain unchanged. The communications and technology marketplace is even more dynamic, robust and competitive today, and mobile technologies are at the cutting edge. It would be incongruous for California, the undisputed epicenter of technology and innovation, to be the only state to try to "regulate" wireless service quality in the vibrantly competitive and ever-evolving wireless ecosystem.

The APD, with little more than citation to inapposite statutory authority, seeks to open a new phase to this long-running proceeding to examine the need for service quality standards for wireless. But there is no need to examine the need for wireless service quality when it has already been examined over the last 14 years; and it is particularly ill-advised to undertake yet another resource-intensive investigation in this time of scarce resources and broad reform.[12] Moreover, there has been no showing that wireless service is anything but adequate and reliable—and getting better; unfortunately, the APD ignores the extensive comments and data CTIA and wireless carriers submitted in this proceeding showing that competition spurs providers to invest billions to constantly improve the quality of their services.

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[11] A McLaughlin & Associates and Penn Schoen Berland 2014 survey found that 94 percent of wireless phone customers are satisfied with their wireless phone service and that the majority (58 percent) is "very" satisfied – both increases over the prior year. McLaughlin & Associates and Penn Schoen Berland, 2014 National Consumer Survey, http://www.mywireless.org/media-center/data-center/2014-national-consumer-survey/.

[12] Assemblyman Mike Gatto and Governor Brown Announce Sweeping CPUC Reforms, June 27, 2016, http://asmdc.org/members/a43/news-room/press-releases/assemblyman-mike-gatto-and-governor-brown-announce-sweeping-cpuc-reforms ("Assemblyman Gatto and Governor Brown have agreed to the following principles to reform the CPUC, most which will appear in legislation that Gatto will carry: * * * Assess reassigning telecommunications governance by January 1, 2018."); *see also*, Governor Brown, Legislators Announce Sweeping Reforms to California Public Utilities Commission, https://www.gov.ca.gov/news.php?id=19461.

The APD appears to rely on the mistaken belief that "service quality standards" are simply another form of "consumer protection," such as the Commission's consumer complaint resolution regime or the types of consumer protection standards enforced by the California Attorney General and the Federal Trade Commission. They are not the same. Service quality standards are tied to the market and technological conditions inherent to stable monopolies, such as electric power and natural gas distribution companies, water utilities, and the old monopoly Bell System. Attempts to apply that same type of regime to robustly competitive, innovative, and fast-changing wireless technologies and services will stifle the innovation that benefits consumers and drives significant economic activity in California and across the nation.

The biggest difference between normal consumer protection and service quality standards is that normal consumer protection policies are based on *parameters* within which commerce between consumers and producers/providers are free to evolve, with *ex post* enforcement. Service quality standards, on the other hand, are not parameters, they are specific minimum requirements or limitations that must be met, based on standards that are established *ex ante*, such as answer times, out-of-service standards, and trouble reports. These types of standards were adopted for the telephone company when it was the monopoly provider with arguably little incentive to meet customers' needs because those customers had nowhere else to turn for service, and when the technologies and service were subject to little change. Even in today's more competitive local market there is little room for confusion about what has caused a service outage on a legacy system (*e.g.*, outside or inside wires, central office issues, or CPE). Presumptions derived from the old monopoly Bell System could hardly be farther from the realities of the wireless market, with multiple competing networks and services, fierce competition on the basis of network reliability, diverse handset offerings, smartphones and technologies (WiFi-enabled voice services, VoIP, VoLTE, and text and video chat services).

Adopting prescriptive standards will inhibit providers' ability to compete on all aspects of service, quality and reliability, in addition to price. By forcing firms to standardize service quality to a Commission, rather than market-determined level, the Commission's prescriptive standards for wireless service would effectively eliminate marketplace options that many consumers may prefer. In differentiated markets like the wireless industry, consumer preferences vary greatly. Different consumers value different combinations of prices, network performance, and other product characteristics. Minimum service quality standards prevent

firms from selling products with some combinations of product characteristics, effectively reducing the variety of products available in the marketplace, and therefore directly harming consumers by removing options they may have preferred. One industry analyst best explained how regulators should respond to consumers' ever-changing and varied demands in a dynamic marketplace like the wireless industry:

> Just as providers in the market must ask how they can add value to consumers, so must regulators. Under monopoly, it was the role of the regulator to stand in for the powerless consumer, to make choices for the consumer, and force suppliers to provide the products and services that regulators believed would meet the consumer's needs. That is no longer the case. Consumers have made it obvious by their behavior that there is nothing generic about them, and they cannot be helped by regulators who treat them as a homogeneous group with identical needs and desires. Indeed, such behavior by regulators can only result in reduced choices for consumers, because regulated companies are forced to provide undesirable homogeneous products—often at artificially high cost—demanded by regulators rather than those products consumers actually want.[13]

Wireless carriers have also consistently demonstrated the real constraints federal law imposes on the Commission's authority to impose wireless service quality standards. The Commission has never addressed the threshold question of whether federal law preempts it from imposing quality-of-service requirements on wireless service. It does. The Commission should adopt Picker's Proposed Decision in light of the extensive record showing the Commission's lack of authority in this area, the lack of a demonstrated need to impose quality standards on wireless providers, and the existence of a competitive mobile market.

Finally, the Commission should not adopt rural outage reporting requirements in the APD because they are unnecessary, preempted, and would be inconsistent with the result of the Federal Communications Commission's ongoing rulemaking and the potential result of California's Legislature's consideration of outage reporting requirements in SB 1250.

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[13] Anna-Maria Kovacs, "Respecting Consumers: Strategic Regulation in a World Full of Choices," November 2011, at 6. Specifically addressing wireless services, Dr. Kovacs also noted that "In that particular case [speaking of mobility], consumers are obviously willing to trade off an extraordinarily high level of reliability in a fixed location for constant availability in ever—changing locations." *Id.* at 4.

DISCUSSION

I. THERE IS NO NEED TO MANDATE WIRELESS SERVICE QUALITY STANDARDS IN LIGHT OF COMPETITION

The record in this docket establishes that wireless carriers compete aggressively on every aspect of wireless service, including price, network quality and customer service. Wireless prices have fallen dramatically,[14] fierce competition in network quality has driven billions of dollars into network deployments nationwide[15] and carriers offer consumers a variety of service options.[16] There is high consumer satisfaction with wireless service.[17] And multiple independent sources already track and report on relative service quality levels. The four major wireless service providers are engaged in endless battles for customers, competing daily with pricing plans, on the quality of their networks, and on consumer satisfaction. Verizon leads the

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[14] June 29, 2015 Comments of CTIA-The Wireless Association, FCC WT Docket No. 15-125 (CTIA FCC Wireless Competition Comments), at 26 (noting that "Since December 1997, when data was first collected for the Consumer Price Index for Wireless Service, the wireless price index has declined by 45% … Indeed, looking at just May 2010 to May 2015 alone, the wireless price index fell 13%, while the consumer price index for all items rose 9% in that same period. Competition is not only driving down prices, but it is also incentivizing carriers to customize plans to meet the individualized needs of consumers.").

[15] *Id*. at 11-13 ([C]apital expenditures by wireless providers continue to escalate, with cumulative capital investment at the end of 2014 totaling more than $430 billion, up 8% from 2013. Notably, when converted to constant 2013 dollars, the cumulative capital investment by the wireless industry in the U.S. is more than $500 billion … These robust investment figures represent a true success story for the U.S. wireless market and for the U.S. economy. For example, in 2013, U.S. carriers spent about four times as much in network infrastructure per subscriber as the rest of the world – or 120% of the combined European Union countries").

[16] *Id*. at v (noting that in "this robustly competitive environment, wireless carriers are offering innovative promotions and service plans every day to ensure that consumers have affordable access to these new offerings: countless different voice, data, and device plans abound to meet the specific communications needs of wireless consumers.").

[17] ACSI Telecommunications Report 2016 at 9 ("All aspects of the wireless customer experience are better than they were in 2015. There is improvement across the board and the in-store experience is getting better. Customers say that staff are more courteous and helpful (81) and transactions are more efficient (78). [¶] Network coverage has improved (79), as have the quality of calls in terms of clarity and strength (79) and frequency of dropped calls (77). No-contract plans seem popular as perceptions of the variety of voice and data plans (75) edge up. Consumers use more bandwidth than ever before, and ACSI data suggest that networks are keeping up with demand as upload speed and reliability improves (75).") *See also*, the J.D. Power surveys focus on customer service / care, smartphones, and network quality. The customer service results for JD Power show improvements over last year: +7 points from the 2015 Full-Service Study; a full 13-point gain from 2015 for non-Contract customers. *See* JD Power Press Releases, February 4, 2016, http://www.jdpower.com/press-releases/2016-us-wireless-customer-care-fs-nc-performance-studies-vol-1.

deployment of 4G LTE and now leads the development of 5G service, which promises "crazy-fast" speeds and an even better customer experience.[18] Verizon's leadership forces competitors to try to keep pace or lose market share as Verizon delivers better quality service with the newest technology.

And new competitive offerings have become even more frequent and aggressive, underscoring intense competition for consumers. Verizon listed a number of examples in its December 2015 comments to President Picker's initial proposed decision.[19] Verizon also noted many other competitive pressures, including (a) novel prepaid offerings, (b) mobile virtual network operators ("MVNOs") like TracFone, (c) Wi-Fi-based providers, and (d) a growing collection of over-the-top VoIP, video-chat, messaging, and social media apps. Recent significant competitive pressures come from cable operators, who are rapidly deploying Wi-Fi access points and networks throughout the country to keep their subscribers connected when they are not at home, and are introducing Wi-Fi-only mobile phone services. In the face of such competitive threats, wireless carriers must deliver more value and quality service to their customers or lose them to these new entrants into mobile service.

This is not an academic discussion. Competition has actually led to falling prices and increased value. Overall, the wireless Consumer Price Index ("CPI") continued to fall in 2014, down 5.1 percent, even as the U.S. CPI for all items held steady.[20] Since 2005, wireless CPI has *fallen* more than 15 percent, while the CPI for all items has *increased* more than 21 percent.[21] Data prices declined even more sharply.[22]

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[18] Verizon To Be First To Field-Test Crazy-Fast 5G Wireless, CNET, September 8, 2015, http://www.cnet.com/news/verizon-to-hold-worlds-first-crazy-fast-5g-wireless-field-tests-next-year/ ("How fast is 5G? Verizon's tests have shown a connection speed that is 30 to 50 times faster than our current 4G network, or higher speeds than what Google Fiber offers through a direct physical connection into the home . . . . With 5G, [a high definition] movie . . . would zip to your device in 15 seconds instead of 6 minutes via 4G.").

[19] Cellco Partnership dba Verizon Wireless (U 3001 C) Opening Comments on Proposed Decision of Commissioner Picker Adopting General Order 133-D, filed December 2, 2015 (December 2015 Verizon Wireless Commnets), at 7-8.

[20] *See* Consumer Price Index – April 2015, Bureau of Labor Stat., U.S. Dept. of Labor USDL-15-0972, 16 tbl. 2 (Apr. 2015); U.S. Dept. of Labor, Bureau of Labor Stat.) ("April 2015 CPI").

[21] *See id*.

[22] Chetan Sharma Consulting, US Mobile Market Update - Q1 2015 (May 18, 2015), http://www.chetansharma.com/usmarketupdateq12015.htm (noting that data prices "plummeted" 77 percent in 2014).

The result of this competition is overwhelmingly satisfied consumers. A McLaughlin & Associates and Penn Schoen Berland 2014 survey found that 94 percent of wireless phone customers are satisfied with their wireless phone service and that the majority (58 percent) is "very" satisfied – both increases over the prior year.[23] *Consumer Reports* recent rankings found that consumers were either "fairly well satisfied" or "very satisfied" with their traditional post-paid services, and prepaid providers reflected the same levels of satisfaction in connection with their services.[24] Similarly, the American Customer Satisfaction Index ("ACSI") found that wireless consumer satisfaction has increased substantially since 2004 and has remained high for the last few years.[25]

The market, not command-and-control regulatory mandates, drives investment to meet consumer demand. Accordingly, the record establishes no basis to impose service quality or reporting standards on wireless providers.

II. THE COMMISSION HAS ALREADY REVIEWED PROPOSALS FOR AND DECIDED NOT TO IMPOSE WIRELESS QUALITY STANDARDS

A new phase to consider wireless standards is also unnecessary because over the last 14 years, the Commission has already considered and appropriately refused to impose metrics or reporting requirements on wireless providers. Verizon detailed this history in its December 2015 comments in this docket.[26] In 2002 the Commission sought comment on imposing a long list of metrics on wireless, but adopted none of the proposed metrics and affirmatively exempted wireless carriers from new quality reporting requirements.[27]

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[23] McLaughlin & Associates and Penn Schoen Berland, 2014 National Consumer Survey, http://www.mywireless.org/media-center/data-center/2014-national-consumer-survey/.

[24] Consumer Reports, *U.S. cell phone carriers*, http://www.consumerreports.org/cro/electronics-computers/phones-mobile-devices/cell-phones-services/us-cell-phone-carriers-ratings/ratings-overview.htm.

[25] American Customer Satisfaction Index, *Benchmarks by Industry—Wireless Telephone Service*, http://theacsi.org/index.php?option=com_content&view=article&id=147&catid=&Itemid=212&i=Wireless+Telephone+Service.

[26] December 2015 Verizon Wireless Comments at 13-15.

[27] *See* D.09-07-019 at 2 ("We grant an exemption from the requirement to report service quality measures under GO 133-C for certain carriers as described herein. . . . Resellers, wireless and Internet protocol (IP)-enabled carriers (including Voice over Internet Protocol (VoIP) and cable) are also exempt.").

ORA and consumer groups again proposed wireless service quality standards in this docket, and the issue was briefed at length; yet the Scoping Memos, Rulings and staff reports in this proceeding have appropriately focused virtually exclusively on wireline service quality.[28] There is no need to entertain—*yet again*—proposals for wireless service quality standards. The record establishes that competition in the wireless market is adequate to ensure quality wireless service and that a regulatory mandate is unnecessary. President Picker thus appropriately removed consideration of wireless quality standards from his initial PD.

III. THE COMMISSION CANNOT LEGALLY IMPOSE WIRELESS SERVICE QUALITY STANDARDS

It is no coincidence that no state has adopted service quality standards on wireless service. In addition to the policy reasons discussed above, federal law plainly preempts it. States cannot and should not regulate because the FCC has adopted a uniform set of wireless service technical and performance standards to achieve wireless service quality, and additional requirements would conflict with FCC standards and frustrate the "light touch" federal scheme for wireless service.

First, the FCC exercises exclusive authority over technical and performance standards for wireless carriers; states are preempted from adopting their own such standards, for example, for voice quality. The FCC found it "neither necessary nor desirable" to "impose a particular grade of service on cellular service" explaining that setting "quality standards could also have the detrimental effect of denying service to economically marginal markets."[29] The FCC thus "allow[ed] the interplay of market forces to determine the grade of service delivered"[30] and preempted state regulation in this area, explaining that:

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[28] Indeed, in this docket the Commission issued a decision in 2013 related to a wireline infrastructure study, confirmed by another decision in 2015 related to same subject, and the current PD mainly focuses on penalties related to wireline metrics.

[29] *In the Matter of An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, 86 F.C.C.2d 469, 508-509 (FCC 1981).

[30] *Id*. *See also In the Matter of An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, 89 F.C.C. 2d, 58, 89 (FCC 1982) (explaining that with regard to "possible conflicts between state regulation and our policy of introducing cellular service in a competitive environment" the FCC had "concluded that in certain areas, specifically technical standards and competitive market structure, assertion of federal primacy was necessary to achieve our desired goals.").

> [O]ur preemption over the technical standards for cellular systems…. [is] essential to the "assurance of compatible operation of equipment on both local and national levels." We have carefully developed the technical requirements essential for efficient spectrum re-use and nationwide compatibility, while providing sufficient flexibility to accommodate new technological innovations. *It is imperative that no additional requirements be imposed by the states which could conflict with our standards and frustrate the federal scheme for the provision of nationwide cellular service.*[31]

The FCC has maintained this policy of promoting wireless service quality through objective, generally-applicable technical standards and construction and license renewal requirements across all wireless services—which the Commission may not second-guess through service quality regulations of its own.[32]

Section 332(c)(3)(A) of the Communications Act[33] also bars a state from regulating the "modes and conditions under which" a wireless carrier is entitled to offer its service within the state.[34] This federal bar on entry regulation prohibits states from regulating the quality or performance traits of wireless carrier infrastructure.[35] The Ninth Circuit found that state law claims targeting the sufficiency of network infrastructure are preempted.[36]

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[31] *Id*. at ¶ 81 (emphasis added).

[32] *See, e.g., In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, 22 FCC Rcd 15289, ¶¶ 163-167 (2007) (adopting 700 MHz construction requirements and license renewal rules to "provide signal coverage" and demonstrate "the propagation model and the signal strength [used] to provide service with the licensee's technology."); *Amendment of the Commission's Rules to Establish New Personal Communications Services,* 8 FCC Rcd. 7700, ¶ 134 (1993) ("PCS will be a highlight competitive service and … licensees will have incentive to construct facilities to meet the demand for service ….").

[33] 47 U.S.C. § 332(c)(3) ("no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile service.").

[34] *Bastien v. AT&T Wireless Service, Inc.,* 205 F.3d 983, 989 (7th Cir. 2000) (lawsuit challenging the adequacy of AT&T Mobility's service barred because it would require the court to resolve allegations about whether AT&T had provided the "infrastructure necessary to provide reliable cellular connections" to its customers.); *see also Shroyer v. New Cingular Wireless Services*, 622 F.3d 1035, 1040 (9th Cir. 2010) (*Bastien* court found preempted entry regulation where "[t]he plaintiff … was asking the court to decide the requisite number of cellular towers needed to support service.").

[35] *Bastien*, 205 F.3d at 989*; see also Naevus Int'L, Inc. v. AT&T Corp*, 713 N.Y.S.2d 642, 644 (N.Y. Supp. 2000) ("A determination of whether or not plaintiff's claim necessitates regulation of rate or market entry of mobile services requires an examination of the complaint as to whether or not it challenges the defendants' infrastructure or charges . . . ").

[36] *Shroyer*, 622 F.3d at 1040 (9th Cir. 2010); *see also*, *In re Apple iPhone 3G Products Liability Litigation*, 728 F. Supp. 2d 1065, 1072 (N.D. Cal. 2010); *see also, In re Google Phone Litig*., 2012 U.S.

The APD fails to address parties' legal arguments regarding the threshold and material question of the Commission's jurisdiction. After five years and extensive briefing of the issue in this docket, the APD should have addressed it; punting this threshold legal issue to a new phase will only promote continuing regulatory uncertainty and litigation.

Nor do Sections 709(h) and 2896 obligate the Commission to impose *ex ante* service quality standards on wireless carriers, as the APD suggests. ORA and consumer groups have raised this argument repeatedly since 2002, and the Commission has rejected it every time.[37] Sections 709(h) and 2896 establish a policy that telephone corporations should provide reasonable quality of service to its customers but do not require the Commission to impose prescriptive rules to achieve this result. The Commission's current policy is to rely on competition, wherever possible, to promote broad consumer interests, including reasonable levels of service quality and should continue to do so here.

IV. THE COMMISSION SHOULD NOT ADOPT RURAL OUTAGE REPORTING

The APD would impose new, burdensome, unworkable, and preempted state-specific notification requirements for rural outages that last 30-minutes and potentially affect 75,000 user minutes. While the APD purports to springboard off newly-adopted FCC rules, it would actually deviate from those rules by second-guessing the FCC's policy balance in adopting the current 900,000 user minute threshold.[38] Providers currently report outages in California to the FCC and

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Dist. LEXIS 108611 (N.D. Cal. Aug. 2, 2012) ("Any claims about the service quality of T-Mobile's 3G networks are, again, preempted.").

[37] In its 2007 comments, for example, TURN argued that the Public Utilities Code required the Commission to adopt quality standards for wireless carriers. TURN Opening Comments in R.02-12-004 at 2-3 (*citing* Pub. Util. Code §§ 709, 2896, and 2897) (filed May 14, 2007). The Commission expressly declined to adopt wireless quality standards. D.09-07-019, *mimeo* at 58 ("Accordingly, we decline to adopt TURN's recommendation. Wireless carriers, VoIP and IP-enabled carriers (including cable) are exempt from service quality standards.").

[38] *See In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, 19 FCC Rcd 16830, ¶ 56 (2004) (concluding that the "900,000 user-minute threshold could result in the reporting of more outages in rural areas" and expressly rejecting arguments that a lower threshold was needed "in order to capture rural outage data…"); *see also Farina v. Nokia*, 625 F.3d 97, 123-26 (2010), *cert. denied* (FCC regulations preempt state law because "[w]hen Congress charges an agency with balancing competing objectives, it intends the agency to use its reasoned judgment to weigh the relevant considerations and determine how best to prioritize between these objectives" thus "[a]llowing state law to impose a different standard permits a re-balancing of those considerations [because a] state-law standard that is more protective of one objective may result in a standard that is less protective of others.").

supply that same report to the CPUC, but the FCC has not given state commissions authority to deviate from FCC requirements.

The FCC is also in the midst of a rulemaking in part to address rural outage reporting issues, but has proposed far different thresholds than the APD.[39] Deviating from the comprehensive national framework, particularly as it could soon change, will further complicate and frustrate the federal regime, and cause needless burden for providers without providing any concomitant benefit to consumers. Moreover, outages can affect multiple demographic areas, but network operators cannot segregate their networks and RF coverage by a rural, suburban or urban label. An outage may impact part of a rural area, part of a suburban area, and/or part of an urban area. Under the APD "rural areas" are any US Census Bureau areas "not within urbanized areas or urban clusters."[40] But "rural areas" are interspersed among "urbanized areas" and "urban clusters" everywhere within the state to the point that this distinction is meaningless; in many cases an outage in an ostensibly non-reportable "urban" area would spill into a "rural" area. Take for example the area between Half Moon Bay and Hillsborough in the Bay Area. Any outage that spills westward of I-280 would be "rural." Requiring network providers to provide an additional level of reporting specific to just a rural area may not be possible.

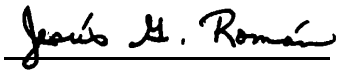
In sum, in light of the FCC's rules and pending rulemaking, the APD's recommendation for new rural outage reporting is misguided and preempted.

CONCLUSION

For the foregoing reasons, the Commission should reject the APD and adopt President Picker's Proposed Decision.

July 12, 2016

Respectfully submitted,



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39 FCC 16-63, ¶ 186.

40 See APD at B11.